रजिस्ट्री सं० डी० 221 REGISTERED No. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग 2—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

संख्या 1] नई दिल्ली, सोमवार, फरवरी 23, 1970/फाल्गुन 4, 1891
NO. 1] NEW DELHI, MONDAY, FEBRUARY 23, 1970, PHALGUNA 4, 1891

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following report of the Joint Committee of the Houses of Parliament on the Bill to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith on incidental thereto was presented to the Rajya Sabha on the 23rd February, 1970.

COMPOSITION OF THE JOINT COMMITTEE

RAJYA SABHA

Shri R. T. Parthasarathy—*Chairman*

2. Shri Suraj Prasad
3. Shri Devi Singh
4. Shri Banka Behary Das
5. Shri M. R. Venkataraman
6. Shri S. A. Khaja Moideen
7. Shri Sanda Narayanappa
8. Chaudhary A. Mohammad
9. Shri Sherkhan
10. Shri B. S. Savnekar

11. Shri Bhunpinder Singh
12. Shri A. G. Kulkarni
13. Shri B. K. Kaul
14. Shri Jogendra Singh
15. Shri Biren Roy

LOK SABHA

16. Shri Nathu Ram Ahirwar
17. Shri N. Anbuchezhian
18. Shri K. Anirudhan
19. Shri Maganti Ankineedu
20. Shri B. N. Bhargava
21. Shri Bibhuti Mishra
22. Shri R. K. Birla
23. Shri C. Dass
24. Shri Devinder Singh
25. Shri Y. Gadilingana Goud
26. Shri V. N. Jadhav
27. Shri C. Janardhanan
28. Shri Dharani Dhar Jena
29. Shri Liladhar Kotoki
30. Shri G. Kuchelar
31. Hazi Lutfal Haque
32. Shri Yamuna Prasad Mandal
33. Shri Nihal Singh
34. Shri D. N. Patodia
35. Shri Rajdeo Singh
36. Shri Ram Charan
37. Shri Shambhu Nath
38. Shri Beni Shanker Sharma
39. Shri Janardan Jagannath Shinkre
40. Shri Chandra Sekhar Singh
41. Shri S. M. Solanki
42. Shri S. S. Syed
43. Shri Om Prakash Tyagi
44. Shri Prem Chand Verma
45. Shri P. Govinda Menon.

MINISTRY OF LAW

1. Shri R. V. S. Peri Sastri, Additional Legislative Counsel.
2. Shri V. S. Bhashyam, Deputy Legislative Counsel.

SECRETARIAT

1. Shri S. S. Bhalerao, Joint Secretary
2. Shri S. P. Ganguly, Deputy Secretary
3. Shri Kishan Singh, Under Secretary

R

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto, was referred, having been authorised to submit the Report on their behalf, present this their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 22nd July, 1968. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Jaisukhlal Hathi, the then Minister of Labour and Rehabilitation on the 15th May, 1969 and was adopted by the House on the same day.

3. The Lok Sabha discussed and concurred in the motion on the 16th May, 1969.

4. The message from the Lok Sabha was reported to Rajya Sabha on the 16th May, 1969.

5. The Committee held 13 sittings in all.

6. At their first sitting held on the 17th May, 1969, the Committee decided that a Press Communique be issued inviting opinions from individuals, associations and other bodies interested in the subject-matter of the Bill and advising them to send their memoranda so as to reach the Rajya Sabha Secretariat by the 14th June, 1969. The Committee also decided to call witnesses for giving oral evidence on the Bill and authorised the Chairman to decide, after examining all the memoranda, as to who should be invited for the purpose. The Chairman also requested members to suggest names of persons or associations whom they would like to be considered for being invited to give oral evidence before the Committee.

7. Eighteen memoranda etc. on the Bill were received by the Committee.

8. The Committee heard the oral evidence tendered by fourteen witnesses.

9. The report of the Committee was to be presented to the House on the 30th day of August, 1969. The Committee were, however, granted extension of time first upto the first day of the Seventieth Session of the Rajya Sabha and then upto the first day of the Seventy-first Session of the Rajya Sabha.

10. Practically all the witnesses who appeared for giving evidence before the Joint Committee in New Delhi had represented the owners' and financiers' point of view. The Joint Committee felt that the interests of

*Published in Part II, Section 2 of the Gazette of India Exteraordinary, dated the 22nd July, 1968.

the hirers especially, should be considered by them and for that purpose appointed three different Sub-committees for visiting Calcutta, Madras and Bombay respectively, after obtaining the requisite permission of the Chairman of the Rajya Sabha. The order of reference to the Sub-committees was as follows:—

> "To consider the rights and duties of parties to hire-purchase agreements with special reference to the interests of the hirers and for that purpose to take evidence of the parties interested in the hire-purchase transactions, conducting business in Calcutta/Madras/Bombay and the nearby regions."

The Sub-committee constituted for visit to Bombay did not function as there were no witnesses who could be invited to appear before them at Bombay. The Reports of the other two Sub-committees, which visited Calcutta and Madras were presented to the Joint Committee at their sittings held on the 8th December, 1969 and 11th February, 1970, respectively.

11. The Committee decided that the evidence tendered before them and that tendered before the Sub-committees should be laid on the Table of the House.

12. The Committee considered and adopted the draft Report on the 21st February, 1970.

13. The principal changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs:—

CLAUSE 4

The Committee feel that having regard to the principle of freedom of contract and the need for minimising litigation "cash price of the goods" should be explained as the price at which the goods may be purchased by the hirer for cash and not as the market value of the goods on the date of the agreement. Paragraph (b) of sub-clause (1) of the clause has, therefore, been amended suitably.

CLAUSE 6

Sub-clause (2).—The Committee feel that in the interest of orderly growth of hire-purchase business and the need for avoiding fraudulent transactions and ensuring that the hirer gets a clear title to the goods whenever he exercises the option to purchase the goods, the condition as to title should be implied at the time the hire-purchase agreement is entered into and at all times during the continuance of the agreement and not only at the time when the property is to pass to the hirer. Paragraph (a) of the sub-clause has been amended suitably.

The Committee further feel that it will be just and proper not to imply the condition as to merchantable quality in regard to defects which have been specified in the agreement as in such a case the hirer takes the goods with full knowledge of such defects. A new item (ii) to that effect has been added to sub-clause (2)(b).

Sub-clause (3).—The Committee feel that the condition that the goods shall be reasonably fit for the purpose for which they are required should be implied not only when such purpose is made known to the owner but also when such purpose is made known to a person who conducted the negotiations antecedent to the conclusion of the hire-purchase agreement. The sub-clause has been amended accordingly.

Sub-clauses (4) *and* (5) (*New*).—As the hire-purchase transactions in relation to goods can be by sample or description or by both, the Committee feel that provisions should be made for implied conditions as to these matters on the lines of sections 17 and 15 of the Sale of Goods Act, 1930. Two new sub-clauses have therefore been inserted, after sub-clause (3).

CLAUSE 7 (NEW)

The Committee have taken note of the fact that in several cases owners charge exorbitant amounts by way of hire-purchase charges. The Committee feel that for protecting the interest of hirers, provisions should be made in the Bill for limiting hire-purchase charges to an amount which would bear a reasonable relation to the cash price of the goods, the number of instalments of hire and business expenses of the owner. New clause 7 has therefore been added for the purpose.

CLAUSE 9 (ORIGINAL CLAUSE 8)

The clause deals with the right of hirer to purchase the goods at any time, with rebate. To cover situations in which an owner refuses to accept payment to prevent purchase by hirer, the Committee have amended the clause to make it clear that the purchase may be completed by payment or tender of the hire-purchase price or balance thereof as reduced by rebate.

CLAUSE 17 (ORIGINAL CLAUSE 16)

Sub-clause (2).—The clause is intended to ensure that an owner by exercising his right of seizure does not acquire any unconscionable benefit. The Committee feel that in determining what benefit the owner has derived, amounts spent by the owner for payment of arrears of taxes and other dues which the hirer, being liable to pay, has failed to pay, should also be taken into account. A new paragraph (iv) to that effect has been added to the sub-clause.

Sub-clause (3).—The Committee feel that the amounts which an owner is liable to pay to the hirer should be paid within thirty days—and not within sixty days as was originally provided—from the date of notice from the hirer demanding payment and that on default the owner should be liable to pay interest at the rate of 12 per cent instead of 6 per cent per annum. The sub-clause has been amended accordingly.

CLAUSE 18 (ORIGINAL CLAUSE 17)

The Committee feel that an owner should be entitled to terminate a hire-purchase agreement on the ground of default in payment of hire only if the default has taken place more than once and even then in such cases the hirer should be given time to make good the default within a week

in cases where the instalments are payable at weekly or lesser intervals and within two weeks in other cases. The clause has therefore been amended suitably.

CLAUSE 20 (ORIGINAL CLAUSE 19)

The amendments made in the clause are of a drafting nature only.

CLAUSE 22 (ORIGINAL CLAUSE 21)

The Committee feel that the period of fourteen days allowed to a hirer under this clause to remedy any breach or act is too short and that it should be increased to thirty days. Necessary amendment has therefore been made in the clause for the purpose.

CLAUSE 23 (ORIGINAL CLAUSE 22)

The Committee feel that an owner should supply a copy of the hire-purchase agreement to the hirer immediately after the execution of the agreement and that if any latitude is given to the owner in this matter, he may abuse the same. Necessary amendment has therefore been made in the clause for the purpose.

The other changes made in the Bill are of consequential or drafting nature.

14. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
February 21, 1970.

R. T. PARTHASARATHY,
Chairman of the Joint Committee.

MINUTES OF DISSENT

I

Role of hire-purchase transactions in the economic development of a country by stimulating rise in demand and supply and raising the standard of living of the people is now well-recognised the world over. It has a tremendous growth potentiality in India and a separate legislation was needed to be enacted to cover hire-purchase transactions which are substantially different in nature compared to the normal transactions of sale and purchase. Government was, therefore, well-advised to bring out a comprehensive legislation on Hire-Purchase.

While introducing a new legislation on Hire-Purchase, some important points which are needed to be kept in view are the following:—

(a) Rights and responsibilities of the respective parties to an agreement should be clearly defined and protected.

(b) Provisions of the legislation should be made comprehensive and easy for application to avoid litigation between the parties. Wherever unavoidable, litigation should be made easy and cheap.

(c) Conditions should be so defined so as to encourage the hirer to purchase and, at the same time, to induce the owner to sell.

(d) Care should be taken to see that cost of the article is not permitted to rise and the risk element and the expense ratio is kept to the minimum.

While going through the various provisions of the Bill and the discussions held in the Select Committee, I find that in an effort 'to give special protection to a hirer', the Bill is being converted into a kind of legislation biased in many respects in favour of a hirer as against an owner. Successful implementation of any contract lies in equitable terms which are fair to both the parties and the legislation, if permitted to remain in its present form, will do great harm to the hire-purchase business by discouraging the owners and financiers who may gradually be driven out of trade. Some of the provisions of the Bill, which are needed to be improved for the sake of equity, are the following:—

(1) 'Ownership' in the case of Hire-Purchase Agreement is somewhat different compared to the 'ownership' as it is understood under general law. According to present practice. in respect of articles like motor vehicles, although the name of a hirer is registered as the 'owner' of the article for the purpose of such registration, the person who finances and arranges the article to be delivered to the hirer is the 'owner' under a Hire-Purchase

Agreement. The financier, apart from being the 'owner', also holds right and title to the goods until all the payments due under the Agreement are received by him from the hirer.

Under the provisions of the present Bill, in the case of an illustration stated above, a person who finances and arranges to deliver will not be treated as an 'owner' until he qualifies himself by registering the article first in his own name and then to sell the same article to the hirer. Such a transfer of registration is not permitted under some of the legislations, like Motor Vehicles Act etc. and the result would be that Hire-Purchase business in respect of all such articles would be considerably reduced or nearly eliminated.

(2) Clause 12 of the Bill empowers the hirer to assign his right, title and interest under the Hire Purchase Agreement with the consent of the owner or, if his consent is unreasonably withheld, without his consent. It is necessary to understand that the hirer has an option to purchase either by making all the payments due under the contract on the respective due dates or earlier. The question of assignment arises only when the hirer is unable to make payment due to the owner under the Agreement and the fact of assignment is a creation by the hirer and not by the owner.

The provision under the Bill permits the hirer to assign his right and title without the consent of the owner when such consent is unreasonably withheld. The question of unreasonableness can be decided only by the Court but the right of assignment has been given to the hirer in respect of a commodity over which he has no title and the owner has a title until full payment is made. Such a provision is not only inequitable but also unjustifiable. The relationship between the two individuals in any business transaction is a relationship of free choice for each other. In respect of any new transaction it is entirely open to a hirer to select an owner of his own choice and, similarly, to an owner to select a hirer of his own choice without assigning any reason whatsoever. The test of business partnership lies in the exercise of basic right of every person to select a partner of his choice without having to assign any reason for such a choice. Similarly, in respect of Hire-Purchase Agreements also, any right of assignment should be given to the hirer only with the consent of the owner and not otherwise.

(3) Clause 17 of the Bill provides for the right of the hirer to recover from the owner the sale proceeds in respect of a seized article when such sale proceeds are in excess of the amount due by the hirer to the owner under the Agreement.

Such a situation involving seizure and resale arises only in the event of the hirer having failed to make payment of his dues to the owner and only when the owner is left with no other alternative. It has been the experience in respect of such cases that there is a sufficient time-lag between the date of seizure and

the date of resale. In many cases, the articles seized have to be repaired and reconditioned. In several cases, clearance has to be obtained from municipal and other authorities. Similarly, it always takes time to find out a suitable buyer for any second-hand commodity. The provision made in Clause 17 makes the hirer entitled to recover the value of the goods *on the date of the* seizure. It is an unworkable and unrealistic provision, firstly because it is impossible to sell any commodity on the same date when it is seized and, secondly because value in respect of such second-hand commodity cannot be ascertained in advance with precision and can be known only when it is sold. The value in all such cases should, therefore, be related to the *date of sale* and not to the date of seizure.

(4) Clause 19 of the Bill provides that in the event of the hirer having defaulted to make payment of the dues to the owner, the owner will be entitled to enter the premises of the hirer and seize the goods. The provision is not clear enough and, by implication, it prevents the owner from seizing the goods if such goods are not lying in the premises of the hirer. In respect of movable articles, it is a common practice to keep such articles at different places on different days. Such a provision will encourage the defaulting hirer to keep the goods away from his own premises, thereby preventing the owner from seizing the goods. The essence of the provision is in the identity of the goods and in order to make it workable and justifiable, it is necessary that the owner should be permitted to seize the goods from any place where such goods may be lying.

(5) Clause 20 of the Bill defines 'statutory proportion' of the hire-purchase price and prevents the owner from recovering the possession of the goods after statutory proportion has been paid by the hirer. In respect of any article where the price is less than Rs. 15,000, such statutory proportion has been fixed at one-half which, when given effect to, will mean that in respect of a commodity valued at Rs. 10,000 after the hirer has made payment of Rs. 5,000, the owner will no more be entitled to recover possession of the goods without obtaining prior order from the court, even though the owner has still to receive Rs. 5,000 from the hirer.

Court proceedings are extremely time-consuming and expensive and are most inconvenient for both the parties.

It has been the experience that maximum number of defaults occur in respect of last few instalments. Even when the owner is entitled under the terms of existing agreements to recover possession, in practice it has been found to be extremely difficult to collect payments in respect of last few instalments. If the provision, as contained in Clause 20, is accepted, it will further encourage the defaulting hirers and collection of payments beyond statutory proportion would become extremely difficult. Hire-Purchase business will become more difficult

and will involve larger risks on the part of the financiers. The right of repossession should, therefore, be retained with the financiers until the total amount payable under the Agreement paid.

(6) The court proceedings and litigation are extremely expensive both for the hirer and the owner and the volume of hire-purchase transactions being very large, it is necessary that some provisions should be made by which the justice may be made cheaper and quicker. In respect of expensive items, like machines and motor-vehicles, the parties are required to go to the High Courts involving great expenditure in form of stamp and lawyers' fees. Some improvement on the lines of other developed countries of the world is called for. It is suggested that all the courts, upto the level of District Magistrates, should be empowered to deal with all hire-purchase disputes irrespective of the value of articles and that no stamp charges should be payable beyond Rs. 5|- in any one case.

The new legislation on hire-purchase can be made more equitable and justifiable after the points stated above are taken into account and adequate provisions are made in the legislation.

NEW DELHI;
February 21, 1970.

D. N. PATODIA.

II

My main dissent to the Bill as finally approved by the Joint Select Committee is that it does not help the hirer to the extent it should. Hire-purchase transactions cover a wide range of commodities now, and have come to play an important role in our country in claiming to facilitate the eventual sale, through instalment payments, of many essential articles of modern life. Three parties are interested in these transactions: (1) the producer or dealer who wants an expeditious disposal of the article he has produced or sells; (2) the financier who hires out the article and collects in agreed instalments the price of the article and also the interest and hire-purchase charges thereon. Sometimes the producer or dealer also happens to be the financier or has some subsidiary financing concern ancillary to his main business of production or sales; (3) the hire-purchaser who, it is claimed, is enabled to buy by this arrangement even costly articles in easy instalments and eventually becomes their owner, though in actual life he is subjected in these transactions to heavy and unconscionable rates of interest and charges.

2. In fact, hire-purchase transactions have also become happy fields of investment, wherein concealed money lending can be resorted to charging high rates of interest, evading the statutory restrictions and penalties relating to regular money lending. And since the title to the property cannot pass to the hirer till the last instalment is paid, there is ample security for the loan given under the name of hire purchase transaction.

3. From all the above it will be clear that it is the assistance and the relief to the hirer, really enabling him to purchase the article finally,

subject only to fair interest and charges with the price, that the provisions of the Bill must dominantly enact and ensure.

4. The very statement of Objects and Reasons of the Bill sets out in para 1—, "..........hire-purchase transactions are governed entirely by the terms and conditions of the agreement between the owners of goods and hirers. This sometimes leads to abuses and evils specially in relation to the hirer who is usually the weaker party to the transaction." I regret, however, that in spite of the concern expressed in words, in several places, the Bill does not see the hirer as the weaker party and help him as such.

5. For instance, clauses (3) and (4) of the Bill which purport to relate to the form and contents of Hire-Purchase agreements, still leaves it to the parties to the agreement as to what may be initial deposit and charges to be paid, what should be the actual number of instalments and the quantum of each instalment in relation to the price, as well as the rate of interest which will be charged. In practice it will again be only the owner or financier who will dictate all these terms of the agreement, as against the weaker party, the hirer. The mere provision that what has been agreed on should be in writing (which is already so in most cases), without any statutory obligations and restraints as to what the owner can insist on and what he cannot, what is the rate of interest beyond which he cannot charge the hirer etc; will still leave the hirer at the mercy of the owner or the financier. It is not fortuitous that some financiers and owners who gave evidence before the Select Committee actually welcomed this Bill, as this does not obviously affect their interests seriously in any way.

6. There was ample evidence before the Committee about the very high rates of interest charged. And yet the Bill could not contain a simple provision restricting the rate of interest. The argument that Money Lending and Interest are State subjects on which the Central Government cannot legislate should certainly have been got over because "Hire-Purchase" is not a money lending transaction and also by having recourse to the concurrent list of the Constitution to impose a restriction on the financier for helping the hirer.

7. The new clause added to the Bill as Clause (7) now, on "limitation on hire-purchase charges" does not in my opinion remedy this defect and really help the hirer. The whole approach in the clause is more one of ensuring a sufficiently paying rate of interest to the owner or financier. Instead of enjoining something like a ceiling on interest—which should be fair and must not be exceeded—in the terms of the agreement itself, the provisions of clause (7) set out a cumbrous and complicated procedure and also allows enough loopholes for charging high interest under the name of hire-purchase charges which is deemed to include interest.

8. By accepting in clause (6) an amendment of an implied condition of the owner having the right to sell the goods at the time of the agreement and not at the time the property is to pass (as per the original draft) the report claims that fraudulent transactions are thus prevented. But it is pertinent to observe that by accepting this amendment, the transaction gets converted from hire-purchase (for which this Bill is intend-

ed) to something like a sale on credit with instalment payments. Will this also not mean that only very big business concerns who alone can own all the goods to be let out on hire purchase, can be the only persons who can carry on hire-purchase business in this view? In my opinion the mischief thus caused is not cured by the addition of the new clause (8) in the Bill, defining when property passes.

9. The blanket prohibition in clause (31) of the Bill should have been relaxed at least to the extent of extending to old agreements, the applicability of such rights as this Bill may confer on the hirer especially as regards monetary reliefs. The Bill should also have provided for summary procedure to obtain reliefs from a tribunal and not left matters to the usual Civil Court proceedings with the attendant delays. The absence of specific provisions and the authority for framing rules under the Act will also make for ambiguity and loopholes enabling the owner or financier to negate even the reliefs sought to be conferred on the hirer by this Bill.

NEW DELHI; M. R. VENKATARAMAN.

February 22, 1970.

III

The Hire Purchase Bill 1968 as reported by the Joint Committee does not appear to have taken certain important factors into account and therefore the very purpose of the Bill is defeated.

One of the main objectives of Hire-Purchase is trade and industrial development particularly in the small industries field. The Government of India is pledged to a rapid industrialisation in the small scale sector.

In the last 14 years, one of the main contributing factors to this industrialisation is the supply of machinery under a liberal Hire Purchase scheme by the National Small Industrial Corporation which is a Government of India undertaking. This Institution has played a yeoman role perhaps without any equal in the whole world for this type of activity. More than 10,000 small industries owe their existence in the country to supply of machinery by the Corporation. The value of such machinery would be round between 40 to 50 crores. In the recent past under socialised banking structure, the Banks have also started giving similar equipment for developing small scale industries. Large machine tool manufacturers like Hindustan Machine Tools have also started deferred payment schemes which assist the entrepreneurs by reducing the initial capital outlay and encourage the industries to pay back borrowed capital as they earn.

The proposed Bill refers purely to the unhealthy trade practices which the Government desires to discourage. The bill is based on the mal-practices of financiers who are fleecing truck operators through various legal lacuna. Such financiers are a class by themselves. Unfortunately, they have been bracketed with organised financing institutions like N.S.I.C. Banks, Machine Tool Manufacturers, Producers of Consumer industries etc., without realising the adverse effects of these specialised organised

institutions whose aim is to develop trade and industry. It is, therefore, necessary to separate out these important developmental institutions from the purview of this Bill.

However, the developmental institutions like the N.S.I.C. the Banking institutions etc., which have a more rational and objective approach to this problem suffer through the introduction of this Bill as the various processes of the Bill tend to discourage their Hire Purchase activities.

Another impact of the Hire Purchase Bill is on developmental institutions which are actively participating in these activities such as the machine tool manufacturers in the country. Today the machine tool industry is just getting over the effects of recession and is lending a very helping hand in modernising existing industries as well as in setting up of new units.

The Bill as it is presented will create problems for these manufacturers to offer their machinery under reasonable Hire Purchase terms.

The consumer industry which is contributing substantially towards better living conditions is also likely to be affected by the Bill as a deliberate attempt is made in the Bill to give special protection to the hirer. I am deeply concerned with the effects of the Bills on Institutions like N.S.I.C. and on the small industries in general. Although the Bill provides in clause 30 the power to exempt from provisions of sections 9 and 12 in certain cases. It would mean considerable hardship for recognised institutions to apply for exemption under this clause. Till such exemptions are granted, the activities of these developmental institutions will come to a stand-still and will effect industrial development considerably. It may also affect the cases where such institutions have already supplied machinery and equipment on a long term instalment basis. As Government has set up these institutions exclusively for the purpose of industrial growth and development, it would be necessary to specify in the Bill itself that institutions including N.S.I.C. should be exempt from the purview of this Bill.

The new legislation on Hire-Purchase can be made more equitable and justifiable after the points stated above are taken into account and adequate provisions are made in the legislation.

NEW DELHI; A. G. KULKARNI.
February 23, 1970.

IV

In a developing country like India, the Hire Purchase system of business has a great role to play. In this system of transactions, people are enabled to pay the price of the goods, while making earnings from the same or enjoying the benefits thereof, by future instalments. In this process, it is calculated to stimulate demand, leading to more production and consequently more employment and a better and higher standard of living for the people.

The monster of unemployment, which is stalking the land may one day engulf the whole country into chaos and confusion and it is, therefore,

imperative that in order to create more opportunities for employment, we should have more units of production, which is not possible until and unless a hunger and demand for all types of consumer goods is simultaneously created in the country as a whole. The Hire-Purchase transactions admitted go a long way in creating the demand for such goods and consequently the increase in supply.

Capital in India is traditionally shy and people do not like to take risks with their investment, if it is not otherwise remunerative. If in hire-purchase transactions, the investors are allowed to have the same return as in Bank deposits, why should they go out of their way and rake their brains and risk their money. It is, therefore, imperative that the investors should be given a little incentive and should be freed from anxiety that they will not lose their capital. They are to be coaxed and cajoled to invest their surplus funds in the hire-purchase business, which alone can improve our shattered economy.

In this context, a law regulating the hire-purchase transactions, clearly defining the rights and obligations of the parties to such transactions and giving each of them immunity from the onslaughts of the other, was long overdue. In the absence of such a law, the business grew but it did so in a haphazard way, leaving the weaker party to the transaction to be exploited by the other, who was more intelligent and shrewd. In 90 per cent of the cases, it was the hirer who was the weaker party but in the remaining 10 per cent, it was the hirer who out-witted the financier and cheated him of his capital even. It was, therefore, necessary that a suitable law was enacted which would not allow the unscrupulous financier to fleece the ignorant and uneducated hirer and similarly would not allow a shrewd hirer to cheat the financier, so that the business of hire-purchase could grow to the ultimate benefit of the national economy.

It is, therefore, necessary that the law should not be loaded in favour of the hirer or the financier inasmuch as in each case it will be the production and ultimately, the economy of the country that will suffer. If it is made more loaded in favour of the hirer, without taking into consideration the difficulties and the risks of the financiers will scare away the latter and *vice-versa*. As such, the law should be just, equitable and impartial to both the parties to the transaction.

But in making this enactment, in our anxiety to give more protection to the weaker party *viz.* the hirer, we have lost sight of the protection needed by the financier, which ultimately is likely to go against the interests of hirers as a class, inasmuch as, if financiers in sufficient numbers would not be forthcoming, how and wherefrom the hirers were to get the wherewithal to buy their commodity with. That would retard the industrial growth of the country and destroy its employment potential which would be rather very unfortunate.

In the changed circumstances, when some banks have been nationalised and a portion of their capital may be canalised in this direction, it may be said that such a fear was imaginery. But even then, a just and equitable law is necessary to protect the banks' interest as financiers as well. Even with the banks in the field, we should not make the private financiers scare and should allow a healthy competition between these two to grow which would ultimately benefit the hirers.

After all, what is needed most to attract more and more financiers to this field of hire-purchase business, is a guarantee that firstly, their capital would be safe and secondly, they would be allowed a reasonable return on their capital by way of remuneration without any recourse to any court of law. But in this Bill, there are some provisions which go directly against this principle.

So long the hirer pays his stipulated instalments and in time, there is no trouble. The trouble starts and arises only when the hirer fails to keep up his commitments and is unable to pay the instalments. In that case, if a hirer is honest, he will plead his inability and would surrender his goods to the financier. But such hirers are very few and difficult to come by and therefore, the financier has been given the right of seizure under clause 19(c) by *entering the premises of the hirer*. Now by a simple device, the hirer could nullify the object of this clause by removing the goods to his neighbour's house. In that case, the financier shall have no remedy without the intervention of the Court. With the clause as it stands, it is doubtful if the financier could seize even an automobile, the subject matter of a hire-purchase agreement, on the street. That would add to miseries of the financier and scare them away.

Then again take clause 12 of the Bill. It authorises the hirer to assign his right, title and interest with the consent of the owner or even without his consent, if it was unreasonably withheld. According to us, this clause goes against the very fundamental principles of contract inasmuch as in case of such assignments, the owner is forcibly made to enter into an agreement with a stranger, whom he may not like or approve and with whom he may not pull on well. In other words, it would be a case of forced marriage which does not always lead to happiness. Again, whether the consent was reasonably withheld or not, shall have to be decided by a competent court.

Similarly, clause 17 is another example which, according to us, creates only opportunities for litigation, instead of protecting the right of the hirer. This clause says that when the owner seizes the goods let under the hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which hire-purchase price falls short of the aggregate of the amount in respect of hire-purchase price upto the date and the value of the goods on the date of seizure. Now this is a very vague clause and will lead to unnecessary and endless litigation. It would be even much more simple and equitable, if the value of the goods was to be taken as on the date of the sale and not as on the date of the seizure. How to find out this value on the date of seizure, will be a colossal and uphill task for any authority, howsoever competent it might be, specially when the goods have been used for some time and have been subjected to wear and tear. With slight repairs and some face-lifting device, the goods may fetch better price later than that on the date of seizure which will ensure to the advantage of the hirer. We do not know, whether the clause as it is, is intended for the benefit of the hirer or the owner but we are sure that in any event, it is not to the advantage of growth and development of the hire-purchase system as a whole.

Clause 20 introduces a new concept of 'Statutory proportion', which if paid, would prevent the owner from seizing or taking possession of the goods. In respect of goods, where the price is less than Rs. 15,000|- such

statutory proportion has been fixed at one-half, which means that in respect of an article valued at Rs. 10,000|-, after the hirer has paid Rs. 5,000|- the owner will not be entitled to recover possession without obtaining orders from the court, even if the owner has to receive Rs. 5,000|- from the hirer. The most unfortunate part of the thing is that, as most of the persons who appeared before the Committee, represented the interests of the hirers or financiers of automobiles and as such, the Committee lost sight of the smaller transactions involving goods of the value of Rs. 500|- or less, *e.g.* bicycles, radios or fans etc. In case of a transaction, involving a bicycle, how an owner could think of going to a court of law to realise Rs. 150|- or Rs. 200|-, when the cost of the legal proceedings itself may amount to that much, besides, the botheration of litigation. The object of the clause may be laudable, so far as the hirer is concerned, but certainly, it will deter such peace-loving businessmen, who abhor going to the court from joining the rank and file of hire-purchase walas. This clause also requires suitable modification.

We have given only a few examples and we do not like to burden this note with more, just to show that in our anxiety, zeal and over-enthusiasm to protect the hirer, we have not cared to see whether there will still remain a financier, from whom he is to be protected any further.

As the Bill stands, in the words of a lawyer witness, it will be nothing but a paradise for lawyers and will not achieve its main objective, namely, developing the hire-purchase system, which is a dire necessity and the crying need of the day, unless the provisions involving litigation are so modified that the courts will have the least opportunity to interfere and the parties could settle their differences mutually.

A new clause *viz.*, clause 7, has been added by the Committee, which could be made more intelligible. It was represented before the Committee by the hirers' representatives that some unscrupulous owners, at times charged exorbitant rates of interest, which consumed all their earnings and did not leave any thing with them. As a Central enactment could not fix the rate of interest which fell under the purview of State legislation, a new device was thought of in the shape of Statutory Charges, fixing the maximum that could be charged by an owner by way of interest and other charges which was to be fixed and specified by the Central Government in consultation with the Reserve Bank of India from time to time. We do not know if it will stand the test of law.

However, in principle, we are opposed to this artificial fixation of Statutory Charges or interest. We have had enough experience of such ceilings, which has led to back-door methods, or black-marketing causing immense loss to the State Exchequer and morals of the society inasmuch as according to the natural laws of demand and supply, the parties shall fix their charges but if the same were above the statutory ones, fixed by the Government, the excess shall never-the-less pass under the table which will be tax-free. The black money is already a problem for the people and the Government alike and we should not create such more opportunities for generation of black money. In view of the changed circumstances in the country with the Banks coming in the field. such a clause is also redundant as the hirers will prefer to go to the Banks instead of private financiers, if their rate of interest were higher than that of the Banks.

As the Bill stands and if the modification on the lines suggested are not made, we are sure it would, instead of accelerating the growth and development of the higher-purchase system, retard its progress, thereby depriving the country of the much needed opportunities and efforts for more and more production.

NEW DELHI;
February 23, 1970.

BENI SHANKER SHARMA,
OM PRAKASH TYAGI.